***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-7634

IN THE

## United States Court of Appeals

FOR THE SECOND CIRCUIT

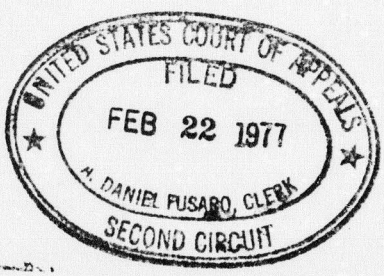
RENE SOCKWELL, A MINOR, ET AL
*Plaintiff-Appellees,*

v.

FRANCIS MALONEY, ET AL
*Defendant-Appellants.*

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT

## JOINT APPENDIX

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## RELEVANT PLEADINGS



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## RELEVANT TRANSCRIPT TESTIMONY CITED IN APPELLANTS' BRIEF

RELEVANT TRANSCRIPT TESTIMONY
CITED IN APPELLEES' BRIEF

# CIVIL DOCKET

## UNITED STATES DISTRICT COURT

Plaintiffs

RENE SOCKWELL, a minor, CHERICE SOCKWELL, a minor,, MARSHA SOCKWELL, a minor, and JOHN SOCKWELL, JR., a minor, all by their next friend ELIZABETH PHILLIPS, and all others similarly situated

Seeks declaratory and injunctive relief re the termination of foster care benefits to children without written notice or pretermination hearing. RULE 23 ALLEGATION.

For Plaintiffs

Alice Leonard
New Haven Legal Assistance
184 Dixwell Avenue
New Haven, Connecticut 06511
772-1873

Edward Matt son
Technical Assistance Project
495 Orange Street
New Haven, Connecticut
777-2531

Defendants

vs.

FRANCIS MALONEY, individually and as Commissioner of the Department of Children and Youth Services, and EDWARD MAHER, individually and as Commissioner of the Department of Social Services of the State of Connecticut

CAUSE: Violation of the Federal Social Security Act, 42 U.S.C. 601 *et seq.*, as well as in violation of rights secured to plaintiffs by the due process clause of the 14th Amendment to the United States Constitution and 42 U.S.C. Sec. 1983

Attorneys
For Defendants

Francis J. MacGregor
Ass't. Attorney General
90 Brainard Road
Hartford, Connecticut

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6-14

Complaint filed.

Motion to Appoint Next Friend filed.

Motion to Certify As A Class Action filed.

Motion for Permission to Proceed in Forma Pauperis filed and endorsement entered thereon: "Motion Granted." Newman, J. M—6-14-76.

Motion for Temporary Restraining Order filed.

6-18

Endorsement entered on Motion for Temporary Restrain-

ing Order as follows: "For Reasons stated in open Court, the application For Temporary Restraining Order is *denied.*" M—6-22-76. Zampano, J.

6-22

Summons issued, together with complaint and copies of the foregoing motions handed to Marshal for service.

Memorandum In Support of Motion For Temporary Restraining Order and Motion for Preliminary Certification of A Class Action filed.

6-18

Hearing held on Declaratory & Injunctive Relief. Two Witnesses sworn and testified on behalf of plaintiff; plaintiffs' brief to be filed by 6-23-76; Defendant's reply to be filed by 6-28-76; 24 hrs. given thereafter to hand deliver any further reply brief; One witness sworn and testified on behalf of defendant; Temporary Restraining Order is *denied* — Motion for Preliminary Injunction — *Decision Reserved:* Oral argument scheduled for July 7, 1976 at 9:30 A.M. Court Adjourned at 12:55 P.M. Zampano, J. M—6-18-76.

6-25

First Amended Complaint filed.

Memorandum In Support of Motion For Preliminary Injunction Order and Motion for Certification of A Class filed.

6-29

Appearance on behalf of the defendants in their official capacities only filed by Attorney Francis J. MacGregor, Assistant Attorney General.

Defendants' Memorandum of Law In Support of Their Objection to A Preliminary Injunction and Their Objection to A Preliminary Injunction and Their Objection to Extend the Class filed.

6-30

Marshals return of service filed. Summons & complaint.

7-2

Plaintiff's Response to Defendants' Memorandum of Law in Support of Their objection to a preliminary injunction and their objection to extend the class filed.

Order entered on Plaintiffs' Motion to Appoint Next Friend as follows: Ordered: that motion to appoint a next friend for the purpose of prosecuting this action be *granted*. Zampano, J. M—7-2-76. copies mailed.

7-7

Hearing held on Oral Argument on Motion for Preliminary And Class Certification: State of Conn. Memorandum of Decision filed; Plaintiff witness; Mary Scott of New Haven, Conn. is sworn and testified; Oral Argument held; *Decision Reserved*. Zampano, J. M—7-7-76.

7-9

Defendants' supplemental memorandum of law in opposition to plaintiffs' motion for a preliminary injunction filed.

7-12

Plaintiff's Supplementary Brief in Support of Motion For Preliminary Injunction and For Class Action Designation filed.

7-19

Court Reporter's notes of proceedings held before Zampano, J., on July 7, 1976 filed. Gale, R.

8-2

Court Reporter's notes of proceedings held before Zampano, J., on 6-18-76 filed. Gale, R.

11-26

Ruling on Plaintiffs' Motions for Class Certification and For Preliminary Injunction, filed and entered. Plaintiffs' mo-

tions for class certification and a preliminary injunction are granted. Court orders defts restrained from (1) failing and refusing to reinstate the named pltfs as recipients of foster care benefits and social services until, etc.; (2) reducing or terminating foster care benefits to members of the pltf class until they are provided with notice and a hearing as set forth above; (3) reducing or terminating social services to members of the plaintiff class who are recipients of social services under Title XX of the S.S. Act, 42 USC 1397, without prior notice and an opportunity to be heard which satisfy the requirements of 45 C.F.R. Sec. 228.14 as specified in 42 CFR Sec. 205.10. So Ordered. Zampano, J. M—11-26-76. Copies mailed to counsel.

12-20

Notice of Appeal, filed by defendants Francis Maloney and Edward Maher. Copies mailed to counsel and to U.S.C.A.

12-23

Court reporter's transcript of proceedings held before Zampano, J. on 6-18-76 filed. Gale, R.

— 1977 —

1-4

Court Reporter's Transcript of Proceedings of July 7, 1976, filed. Gale, R.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. N 76-200

RENE SOCKWELL, a minor, CHERICE SOCKWELL, a minor, MARSHA SOCKWELL, a minor, and JOHN SOCKWELL, JR., a minor, all by their next friend ELIZABETH PHILLIPS, and all others similarly situated,
*Plaintiffs,*

v.

FRANCIS MALONEY, individually and as Commissioner of the Department of Children and Youth Services, and EDWARD MAHER, individually and as Commissioner of the Department of Social Services of the State of Connecticut,
*Defendants.*

## COMPLAINT

16. According to all reports, the children have thrived in the home of their great aunt. There are no plans to change the children's living situation.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. N 76-200

RENE SOCKWELL, a minor, CHERICE SOCKWELL, a minor, MARSHA SOCKWELL, a minor, and JOHN SOCKWELL, JR., a minor, all by their next friend ELIZABETH PHILLIPS, and all others similarly situated,
*Plaintiffs*,

v.

FRANCIS MALONEY, individually and as Commissioner of the Department of Children and Youth Services, and EDWARD MAHER, individually and as Commissioner of the Department of Social Services of the State of Connecticut,
*Defendants*.

## FIRST AMENDED COMPLAINT

### PRELIMINARY STATEMENT

1. This is a class action brought on behalf of foster children in the State of Connecticut for injunctive and declaratory relief against the policy of the State of Connecticut of failing and refusing to provide written notices or pretermination hearings when the state decides to reduce, suspend or terminate foster care benefits to children. This policy is in violation of the Federal Social Security Act, 42 U.S.C. 601 *et seq*., and regulations thereunder; in violation of Title XX of the Social Security Act, 42 U.S.C. Sec. 1397 *et seq*. and regulations thereunder; and in violation of rights secured to the plaintiffs by the due process clause of the Fourteenth Amendment to the United States Constitution.

## JURISDICTION

2. Jurisdiction is conferred upon this Court by 28 U.S.C. Sec. 1331, 1343(3) and (4). The matter in controversy, exclusive of interest and costs, is in excess of $10,000. for each plaintiff.

3. Plaintiffs' action for injunctive and declaratory relief is brought pursuant to 42 U.S.C. Sec. 1983 and 28 U.S.C. Sec. 2201 and 2202 to redress the deprivation under color of State Law, ordinances, regulations or usage, of rights, privileges and immunities secured by the Due Process clause of the Fourteenth Amendment to the United States Constitution and under 42 U.S.C. Sec. 601 *et seq.*, and 42 U.S.C. Sec. 1397 *et seq.*, of the Social Security Act.

## PARTIES

4. Plaintiffs RENE SOCKWELL, CHERICE SOCKWELL, MARSHA SOCKWELL AND JOHN SOCKWELL, JR., are all citizens of the United States. They are the foster children of Mary Scott and reside with her in New Haven, Connecticut.

5. Plaintiffs' next friend ELIZABETH PHILLIPS, is the Senior Supervisory Social Worker at the Hill Health Center in New Haven. In that capacity Ms. Phillips has provided counseling and treatment to the plaintiff children for more than three years.

6. Defendant FRANCIS MALONEY is the Commissioner of the Connecticut Department of Children and Youth Services. He presently has operational responsibility under C.G.S. Sec. 17-415 for the foster care program of the State of Connecticut, including the non-committed child program under which the plaintiffs have been receiving assistance.

7. Defendant EDWARD MAHER is the Commissioner of the Connecticut Department of Social Services which is the recipient of all Federal Funds made available to the State of Connecticut for public assistance under the Social Security Act, including the foster care and Title XX Social Services Programs. Although the operational responsibility for foster care services has recently been delegated by Defendant MAHER to Defendant MALONEY, Defendant MAHER remains ultimately responsible for the proper disbursement of these Federal Funds under C.G.S. Sec. 17-2, Sec. 17-3b, Sec. 17-3c and Sec. 17-32.

## CLASS ACTION

8. Plaintiffs bring this action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure on behalf of themselves and all other similarly situated. The class consists of all present and future foster children whose foster care benefits or Title XX social services are or will be discontinued, terminated, suspended, or reduced by the State of Connecticut.

9. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impracticable; these are questions of law and fact common to each class; the claims of the Plaintiffs are typical of the claims of the class; and the Plaintiffs will fairly and adequately protect the interest of the class. The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief.

## STATEMENT OF FACTS

10. In December, 1972, Shirley Sockwell, mother of Rene, Cherice, Marsha and John Sockwell, was committed to the Niantic Correctional Institution to serve a three- to seven-year sentence for armed robbery, assault, and kidnapping. At that time, the children were ages 7, 6, 4 and 2 years, respectively.

11. Mr. John Sockwell, the father of the children, attempted thereafter to maintain the family home. He was living alone with the children and working full time, and was unable to care for the children during the day. He applied for protective services from the Connecticut Welfare Department, now the Department of Social Services (DSS). In January, 1973, he received from the Welfare Department a homemaker to care for the children during the day, five days a week, at a cost to the State of Connecticut of $80 and later $100 each week.

12. On or about April 1, 1973, Mr. Sockwell formally requested that the State Welfare Department place the children for full time care and treatment.

13. In March, 1973, the Protective Services section of the Connecticut Welfare Department contacted Mary Scott, a great aunt of the children who lived in New Haven. They offered Mrs. Scott a position as foster mother to the four children, who would be receiving support payments under the foster care program.

14. Mary Scott accepted the Department's offer. She entered into written agreements with the State of Connecticut concerning each of the four children, and on or about April 1, 1973, the children were placed in her home. A copy of those agreements are attached as Exhibits A1, A2, A3 and A4 and are hereby incorporated in this Complaint.

15. At the time the four plaintiff children were originally placed in the home of Mary Scott under a voluntary placement by their father, they came under the Welfare Department's non-committed child program, which is not reimbursable by the Federal government.

16. On January 17, 1974, the Commissioner of Welfare filed petitions of alleged neglect in the Juvenile Court of the

State of Conecticut concerning each of the four Sockwell children.

17. On May 16, 1974, the Juvenile Court committed the four children to the custody of the Commissioner of Welfare. The children thus came under the AFDC — Foster Care (AFDC-FC) program of the State of Connecticut, which operates pursuant to Title IV-A of the Social Security Act.

18. Since April 1, 1973, the four Sockwell children have resided with Mary Scott and her own daughter Sharon Scott. As foster children, they have received monthly benefits for their room and board and personal needs from the Connecticut Welfare Department, now DSS, and recently from the Department of Children and Youth Services (DCYS) which by contract with DSS operates the foster care program.

19. On October 1, 1975, each of the four Sockwell children began receiving social services, including counseling under Title XX of the Social Security Act, 42 U.S.C. Sec. 1397. A copy of the payment requisitions completed by the Department of Children and Youth Services for RENE, CHERICE, MARSHA and JOHN SOCKWELL are attached as Exhibits B1, B2, B3, and B4 and are hereby incorporated in this Complaint.

20. According to all reports, the children have made considerable progress under the care of their great aunt. There are no plans to change the children's living situation.

21. On or about April 1, 1976, Mary Scott was informed verbally by a case worker from the Department of Children and Youth Services that the Department had made a final decision to terminate the four Sockwell children from the foster care program.

22. Defendant Commissioner of DCYS terminated foster

care benefits and Title XX services to the plaintiff children effective April 1, 1976.

23. The children's foster care benefits and Title XX services were terminated without written notice or any written explanation of the grounds of termination and without any opportunity for a hearing on the decision.

24. On April 1, 1976, ELIZABETH PHILLIPS submitted a written request for a hearing on the decision to John Harder, District Director of the Department of Social Services, a copy of which is attached hereto as Exhibit C and is hereby incorporated in this Complaint. That request was denied by Mr. Harder, who responded that decisions by DCYS were not appealable under C.G.S. Sec. 17-2a, and therefore referred Ms. PHILLIPS to DCYS with her request. (See letter of April 7, 1976, attached as Exhibit D and hereby incorporated in this Complaint.)

25. On April 5, 1976, ELIZABETH PHILLIPS submitted a written request for a hearing to the Chief of the Fair Hearing Section of the Department of Social Services, a copy of which is attached hereto as Exhibit E and is hereby incorporated in this Complaint. Ms. Priscilla Shea, Acting Supervisor of the Fair Hearing Section, denied the request, stating that that division DSS had no jurisdiction over a termination of services by DCYS. (See letter of April 19, 1976, attached as Exhibit F and hereby incorporated in this Complaint.)

26. On April 8, 1976, ELIZABETH PHILLIPS submitted a written request for a hearing on the decision to Defendant MALONEY and the Department of Children and Youth Services, a copy of which is attached hereto as Exhibit G and is hereby incorporated in this Complaint. In response to this request, Ms. PHILLIPS was informed by Donald Looney and Jeanette Dille of the Department of Children and Youth Services that the Department had no mechanism or procedure

for such hearing, and that her request could therfor not be granted.

27. At the suggestion of her Department of Children and Youth Services worker, Mrs. Scott applied for AFDC benefits for the four children, which were granted. Under the foster care program, Mary Scott received $133.00 per child each month for three of the children, and $128.00 each month for the fourth child, for a total of $527.00 each month. Now, under AFDC, the four children receive a total of $216.00, their monthly loss is approximately $311.00.

28. As a result of this loss, Mary Scott, who herself is a public assistance recipient, is faced with the choice of either giving up these children or of keeping them but being unable to provide them with the things they need.

29. No regulations have been promulgated by the Department of Children and Youth Services or the Department of Social Services providing for written notice or written statement of the grounds on which foster care assistance or social services are being discontinued, terminated, suspended or reduced, nor providing for hearings for children desiring to contest such discontinuance, termination, suspension or reduction.

## FIRST CAUSE OF ACTION

30. Paragraphs 10 through 29 are hereby realleged and incorporated herein.

31. The defendants' refusal to provide meaningful notice in writing of the grounds of the termination of foster care payments and social services to the Plaintiffs, and the Defendants' failure to provide a procedure under which the Plaintiffs might obtain a pretermination administrative hearing prior to loss of their benefits and social services is a violation

of the due process clause of the Fourteenth Amendment to the United States Constitution.

## SECOND CAUSE OF ACTION

32. Paragraphs 10 through 29 are hereby realleged and incorporated herein.

33. The refusal of the Defendants to provide proper notice and hearing to the Plaintiffs who were applicants for and recipients of federally reimbursable funds under Title IV-A of the Social Security Act, 42 U.S.C. Sec. 601 *et seq.*, violates both that Act and the regulations thereunder, specifically 45 C.F.R. Sec. 205.10, which requires prior written notice and an opportunity for a hearing upon the intended discontinuance, termination, suspension, or reduction of foster care benefits under a State plan operating pursuant to Title IV-A.

## THIRD CAUSE OF ACTION

34. Paragraphs 10 through 29 are hereby realleged and incorporated herein.

35. The refusal of the Defendants to provide proper notice and hearing to the Plaintiffs who were applicants for and recipients of federal financed services under Title XX of the Social Security Act, 42 U.S.C. Sec. 1397, violates both that Act and the regulations thereunder, specifically 45 C.F.R. Sec. 228.14 and 205.10, which require prior written notice and an opportunity for a hearing upon the intended discontinuance, termination, suspension or reduction of services received under Title XX.

WHEREFORE, the Plaintiffs pray that this Court:

1. Grant temporary relief restraining Defendants MALONEY and MAHER, their officers, agents, servants,

employees, and attorneys, their successors in office, and all other persons acting in concert with them, from:

A. Failing and refusing to reinstate Plaintiffs as recipients of foster care benefits and social services until they are provided with legally sufficient notices and hearings as described in Section 3 below:

B. Discontinuing, terminating, suspending or reducing foster care benefits or social services to members of the Plaintiff class until they are provided with constitutionally adequate notice and hearing as described in Section 3 below; and

C. Discontinuing, terminating, suspending or reducing foster care benefits to members of the Plaintiff class who are recipients of or applicants for federally reimbursable funds under Title IV-A of the Social Security Act, 42 U.S.C. Sec. 601 *et seq.*, until they are provided with notice and hearing which satisfy the requirements of 45 C.F.R. Sec. 205.10.

D. Discontinuing, terminating, suspending or reducing social services to members of the Plaintiff class who received such services under Title XX of the Social Security Act, 42 U.S.C. Sec. 1397, until they are provided with notice and hearing which meet the requirements of 45 C.F.R. Sec. 228.14, as specified in 45 C.F.R. Sec. 205.10.

2. Grant preliminary and permanent relief restraining Defendants MALONEY and MAHER, their officers, agents, servants, employees, and attorneys, their successors in office, and all other persons acting in concert with them, from failing and refusing to reinstate plaintiffs as recipients of foster care benefits and social services until they are provided with legally sufficient notices and hearings as described in Section 3 below.

3. Grant preliminary and permanent relief restraining Defendants MALONEY and MAHER, their officers, agents, servants, employees, and attorneys, their successors in office, and all other persons acting in concert with them, from discontinuing, terminating, suspending or reducing foster care benefits or social services to members of the plaintiff class until they are provided with constitutionally adequate notice and hearing, including:

A. Written notice prior to the proposed action, such notice indicating the reasons for the intended agency action, the specific regulations supporting the action the individual's right to request a hearing, the method by which he may obtain a hearing, and his right to be represented by counsel, a friend, a relative, or to represent himself;

B. The right to continuation of foster care benefits and social services until a decision is rendered after a hearing;

C. The right to a hearing before an impartial official or designee of the agency;

D. Adequate opportunity to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing; the right to bring witnesses; to establish all pertinent facts, and circumstances; to advance any arguments without undue interference; to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

E. A written decision by the officer based solely upon the evidence presented at the hearing, stating fully the regulations supporting the decision and stating the methods of implementation.

4. Grant preliminary and permanent relief restraining the Defendants, their officers, agents, servants, employees, and attorneys, their successors in office, and all other persons acting in concert with them, from discontinuing, terminating, suspending or reducing foster care benefits to members of the Plaintiff class who are recipients of federally reimbursable funds under Title IV-A of the Social Security Act, 42 U.S.C. Sec. 601 *et seq.*, without prior notice and an opportunity to be heard which satisfy the requirements of 42 C.F.R. Sec. 205.10, including:

A. The right to a hearing held pursuant to hearing procedures and publicized by the State agency;

B. At least ten days prior to the date upon which the proposed action would become effective, written notice, including a statement of the action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, and an explanation of the individual's right to request a hearing, of the methods by which he may obtain a hearing, and of his right to be represented by counsel, a friend, a relative, or to represent himself;

C. The right to a hearing before an impartial official or designee of the agency;

D. The right to continuation of foster care benefits until a decision is rendered after a hearing;

E. Adequate opportunity to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing; the right to bring witnesses; to establish all pertinent facts and circumstances; to advance any arguments without undue interference; to question or refute any testimony

or evidence, including opportunity to confront and cross-examine adverse witnesses;

F. A memorandum decision summarizing the facts and identifying the regulations supporting the decision; prompt, definitive agency administrative action taken within 90 days of the request for a hearing; and notification of his right to appear to the agency hearing or judicial review; and

G. When the hearing is favorable to the recipient, the right to prompt corrective payments retroactive to the date the incorrect action was taken.

5. Grant preliminary and permanent relief restraining the Defendants, their officers, agents, servants, employees, and attorneys, their successors in office, and all other persons acting in concert with them, from discontinuing, terminating, suspending or reducing social services to members of the Plaintiff class who are recipients of social services under Title XX of the Social Security Act, 42 U.S.C. Sec. 1397, without prior notice and an opportunity to be heard which satisfy the requirements of 45 C.F.R. Sec. 228.14 as specified in 42 C.F.R. Sec. 205.10.

6. Declare that termination of foster care benefits and social services involves a substantial property interest and requires prior written notice and full opportunity to be heard by virtue of the Fourteenth Amendment of the United States Constitution.

7. Declare that termination of foster care benefits involves the termination of benefits received under a State plan pursuant to the Title IV-A of the Social Security Act, and thus requires notice and a hearing according to 45 U.S.C. Sec. 205.10.

8. Declare that plaintiffs were recipients of social services under Title XX of the Social Security Act, 42 U.S.C. Sec. 1397, and as such, upon the discontinuance, termination, suspension or reduction of such services, are entitled to meet the requirements of 45 C.F.R. Sec. 228.14 as specified in 45 C.F.R. Sec. 205.10.

9. Retain jurisdiction of this action until Defendants fully comply with the order of this Court to the satisfaction of the Court.

10. Award Plaintiffs their costs including reasonable attorenys' fees.

11. Grant such other and further relief as may be just and proper.

*Respectfully submitted,*

THE PLAINTIFFS

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*Their Attorneys*

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL NO. N-76-200

RENE SOCKWELL, et al,

*Plaintiff*,

v.

FRANCIS MALONEY, et al,

*Defendants*.

## RULING ON PLAINTIFFS' MOTIONS FOR CLASS CERTIFICATION AND FOR PRELIMINARY INJUNCTION

Plaintiffs are four minor children who reside with their great aunt and received foster care payments from the State of Connecticut from April 1973 until May 1976. In this civil rights action, 42 U.S.C. § 1983, seeking declaratory and injunctive relief, they challenge, on constitutional and statutory grounds, the refusal of defendant Commissioners to afford them written notice and a hearing before terminating their foster care and social service benefits.

In a three-count complaint they charge that 1) the failure to provide meaningful notice of the grounds for termination and a pretermination hearing deprives them of due process; 2) defendant Maloney has violated Title IV-A of the Social Security Act, 42 U.S.C. § 601 *et seq.*, and the regulations thereunder, 45 C.F.R. § 205.10,[1] which require written notice and a

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[1] 45 C.F.R. § 205.10 states, in part:

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, XVI or XIX of the Social Security Act shall provide for a system of hearings under which:

. . . .

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance:

hearing before termination of foster care benefits provided by a state operating under a Title IV-A plan; and 3) defendant Maher has violated Title XX of the Social Security Act, 42 U.S.C. § 1397 *et seq.*, and the regulations thereunder, 45 C.F.R. 228.14,[2] which require written notice and a hearing before termination of social services provided by the state under Title XX. Jurisdiction is premised on 28 U.S.C. §§ 1331, 1343(?) and (4), and 28 U.S.C. §§ 2201, 2202. Plaintiffs now move for the certification of a class and a preliminary injunction.

I.

The material facts are rather unique but not in dispute. In April 1973, the plaintiffs went to live with their great aunt

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(i) The State or local agency shall give timely and adequate notice . . . . Under this requirement:

(A) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective.

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested; . . .

. . . .

(5) An opportunity for a hearing shall be granted to . . . any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance or termination of assistance. . . . .

. . . .

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated, (but is subject to recovery by the agency if its action is sustained), until the decision is rendered after a hearing . . .

[2] 45 C.F.R. § 228.14 provides:

"The State plan shall provide for a system of hearings under which applicants for, or recipients of, services or an individual acting on behalf of an applicant or recipient, may appeal denial, reduction or termination of a service, or failure to act upon a request for service with reasonable promptness. Under this requirement, the procedures and provisions of 45 C.F.R. 205.10 shall apply.

under the Non-Committed Child Program of the Connecticut State Welfare Department, see Conn. Gen. Stat. § 17-32(b), when their natural father voluntarily agreed to this placement until the family could be reunited. Under this program, the children received state-funded foster care payments and protective services. In May 1974, after neglect petitions had been filed by the Commissioner of Welfare, *Id.* § 17-62, the Juvenile Court adjudged the children "homeless" and committed them to the custody of the Commissioner. They continued to live with their aunt, but were now eligible for the AFDC-Foster Care program, 42 U.S.C. § 608(a), which provides federal reimbursement for payments made under a state plan when a dependent child has been judicially committed to a state agency for foster care.[3]

However, on December 3, 1975, the judicial commitment of the children was revoked after a judge of the Superior Court found that they were not "uncared for." No action was taken by the Department of Children and Youth Services to return the children to their natural parents or to recommit them on the ground that they were neglected or abandoned in fact. Instead, the children continued to reside with their aunt and to receive foster care payments from the state. In addition, as of October 15, 1975, they received social services from the state which were funded, in large part, by the federal government under Title XX of the Social Securities Act, 42 U.S.C. § 1397 *et seq.*

On April 1, 1976, both the federally funded social services and state-funded foster care benefits were terminated, effective May 15, 1976, without prior written notice or explanation of the grounds for termination, or an opportunity for a hearing. Because plaintiff aunt is a sufficiently close blood relative, she

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[3] Although plaintiffs were eligible for the AFDC-Foster Care program, the State never received federal reimbursement because officials of the Department of Children and Youth Services failed to submit vouchers for the foster care payments.

was eligible for assistance under the Aid for Families with Dependent Children program, see 42 U.S.C. § 606(a), for her care of the children, which she applied for and began receiving on May 15.[4]

On June 14, 1976, plaintiffs filed the instant action claiming that they were entitled to written notice and a hearing before the state terminated their foster care payments. The Court held a hearing on June 18 on plaintiffs' motion for a temporary restraining order and denied the motion. At that time, the attorney for defendant Commissioners conceded that 1) if the foster care payments received by plaintiffs had been paid with federal matching funds, they would have been entitled to notice and a hearing before termination pursuant to 45 U.S.C. § 205.10; and 2) that the state had no procedures for providing any notice or hearing in conjunction with the termination or reduction of wholly state-funded foster care payments.

However, at the suggestion of the Court, defendants agreed to afford plaintiffs a fair hearing on the termination of their foster care benefits pursuant to Conn. Gen. Stat. § 17-2a. The hearing was held on June 21, at which time the hearing examiner upheld the decision to discontinue foster care payments and services to the children under Title XX from the Department of Children and Youth Services. The Court held another hearing on July 7 with respect to plaintiffs' motion for class certification and for a preliminary injunction. Comprehensive briefs have now been filed.

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[4] Under the foster care program, the plaintiffs' aunt received $133 per child each month for three of the children and $128 each month for the fourth, for a total of $527 each month. Now, under AFDC, the four children receive a total of $216, which has been added to their aunt's prior grant. Their monthly loss is $311.00.

II.

Plaintiffs seek certification of a class of "all present and future foster children whose foster care benefits or Title XX social services are, or will be, discontinued, terminated, suspended, or reduced by the State of Connecticut." The defendants, on the other hand, seek to limit the class of potential plaintiffs to foster care children whose judicial commitment has been revoked by the Superior Court on a finding that they are not "uncared for" and who are living with a blood relative, thereby qualifying them for AFDC assistance under 42 U.S.C. § 606(a).

The Court is satisfied that certification of the class requested by plaintiff should be granted. The prerequisites of Rule 23(a), F. R. Civ. P., concerning the size of the class proposed and the typicality of claims have been met. Regardless of the manner of termination and the fortuitous availability of AFDC assistance in the instant case, which makes the harmful effects of summary termination less pronounced, the central fact remains that plaintiffs' foster care benefits were terminated without prior written notice or a hearing giving rise to their legal claim. Moreover, the defendants' intention to persist in their practice of not affording foster care children notice and a hearing before terminating benefits makes injunctive relief for the class of foster care children appropriate. See Rule 23(b)(2), F. R. Civ. P.; cf. *Lugo* v. *Dumpson*, 390 F. Supp. 379, 381 (S.D.N.Y. 1975). The Court is convinced that plaintiffs, ably assisted by counsel, will fairly and adequately protect the interests of the class. See *Lyons* v. *Weinberger*, 376 F. Supp. 248 (S.D.N.Y. 1974). Accordingly, the plaintiffs' motion to certify a class of foster care children is granted.[5]

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[5] Because the plaintiff class is being certified under Rule 23(b)(2) the mandatory notice provision of Rule 23(c)(2) does not apply. See *Frost* v. *Weinberger*, 515 F.2d 57, 65 (2 Cir.

## III.

On the issue of preliminary injunctive relief, the plaintiffs, relying principally on *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), contend that they have a property interest in state foster care benefits granted to children in need of care and protection from the state, see Conn. Gen. Stat. 17-32; and therefore, they are entitled to due process to protect that interest. Cf. *Mathews* v. *Eldridge*, ___ U.S. ___ (February 24 1976); *White* v. *Roughton*, 530 F.2d 750 (7 Cir. 1976); *Frost* v. *Weinberger*, 515 F.2d 57 (2 Cir. 1975), cert. denied, ___ U.S. ___ (1976). Moreover, they argue that the oversight of state officials in neglecting to request federal reimbursement for foster care payments to plaintiffs cannot excuse defendants' failure to afford them the due process to which they would otherwise have been entitled pursuant to 45 C.F.R. § 205.10. In addition, witnesses for the plaintiffs testified that the loss of foster care benefits would create financial hardship for plaintiff aunt and cause them irreparable emotional and psychological harm. As to the class, the plaintiffs submit that the summary termination of foster care benefits would clearly result in harm to children who are awarded those benefits after a finding by the defendant Commissioner of Children and Youth Services that they are in need of care and protection from the state.

Defendants, on the other hand, assert that plaintiffs have no right to notice or a hearing before state-funded foster care payments are terminated. Relying on the facts of this particular case, they claim that because AFDC benefits were granted at the same time that foster care benefits were terminated, the plaintiffs cannot show the "brutal need" or "deprivation of the very means by which to live" which *Goldberg* requires before

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1975), cert. denied, ___ U.S. ___ (1976); *Mattern* v. *Weinberger*, 519 F.2d 150, 158 (3 Cir. 1975); *Wetzel* v. *Liberty Mutual Insurance Co.*, 508 F.2d 239, 254-57 (3 Cir. 1975).

due process safeguards are warranted. See *Mathews* v. *Eldridge,* supra. Moreover, the defendants urge that, because the plaintiff children's termination from foster care benefits and Title XX services was mandated by a decision of the Superior Court to revoke their judicial commitment, there was no need for a pretermination evidentiary hearing to resolve issues of fact or credibility. See *Goldberg* v. *Kelly,* supra; cf. 45 C.F.R. § 205.10(a)(5).[6] Finally, defendants argue that plaintiffs have failed to make a showing of irreparable harm by pointing out that: 1) foster care payments were terminated only after the plaintiffs' aunt applied for and was granted increased AFDC assistance; see 45 C.F.R. §§220.19(d), 233.110 (a)(2); 2) the level of benefits received by the aunt for herself, her daughter, and plaintiffs is as high as any other family of six under the AFDC program in the New Haven area; 3) plaintiffs are eligible for food stamps, Medicaid assistance, and, upon request, protective services from the Department of Children and Youth Services; 4) plaintiffs have no right to a particular level of welfare benefits, see *Rosado* v. *Wyman,* 397 U.S. 397 (1970); *Dandridge* v. *Williams,* 397 U.S. 471 (1970); and 5) the fact that AFDC assistance is less generous than foster care grants does not in and of itself constitute irreparable harm.

It is well-established that a preliminary injunction will issue "only upon a clear showing of either 1) probable success on the merits *and* possible irreparable injury, *or* 2) sufficiently serious questions going to the merits to make them a fair ground for litigation *and* a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Sonesta Int'l Hotels Corp.* v. *Wellington Associates,* 483 F.2d

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[6] 45 C.F.R. § 205.10(a)(5) reads, in part:

> ". . . a hearing need not be granted when either State or Federal law require automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation."

247, 250 (2 Cir. 1973) (emphasis in original); see also *Brown* v. *Chote*, 411 U.S. 452, 456 (1973); *San Filippo* v. *United Bro. of Carpenters & Joiners*, 525 F.2d 508, 511 (2 Cir. 1975); *Robert W. Stark, Jr., Inc.* v. *New York Stock Exchange*, 466 F.2d 743, 744 (2 Cir. 1972); *Checker Motors Corporation* v. *Chrysler Corporation*, 405 F.2d 319, 323 (2 Cir.), cert. denied, 394 U.S. 999 (1969). On the present record, the plaintiffs have satisfied these standards.

It is uncontroverted that the care, welfare and protection of the plaintiff children are the responsibility of the defendants. The benefits accorded these children, in the form of foster care payments to the plaintiff aunt were extended by the defendants through May 15, 1976, notwithstanding the ruling of the Superior Court in December, 1975.[7] Recognizing that the children were thriving in the aunt's home, the defendants neither made an attempt nor expressed a desire to have them returned to their natural parents. However, rather than continuing foster care payments from state funds, as the children had received before the Juvenile Court commitment in May 1974, the defendants terminated foster care payments and advised the plaintiff aunt to apply for AFDC assistance. See 45 C.F.R. §§ 220.19, 233.110(a)(2). This "bait and switch"-type activity had the effect of reducing the children's benefit level without explanation or opportunity to contest it.

Such unexplained manipulation of plaintiffs' welfare benefits should not be countenanced. Counsel for defendants has conceded that federal statutes and regulations require

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[7] Whether the children's foster care benefits after December 1975, came from federal or state funds, they caused plaintiff aunt to rely on their indefinite continuance. From April 1973 until May 1974, the plaintiff children had received foster care benefits under a voluntary program. When judicial commitment was revoked, but the children remained with the aunt, and payments continued, plaintiff aunt properly assumed that benefits were again being received under the Non-Committed Child Program. She was never informed by defendants that this was not the case and that payments would only continue until she could apply for increased AFDC assistance.

written notice and a hearing prior to reduction or termination of AFDC-Foster Care payments or social services rendered under Title XX. See 45 C.F.R. §§ 205.10, 228.14. The argument that such process is not required because the termination of AFDC-Foster Care payments is automatic when judicial commitment is revoked is without merit. The relevant statute, 45 C.F.R. § 205.10(a)(5), refers to changes in state or federal law which affect classes of recipients and not to judicial determinations made on an individualized basis.[8] In addition, the regulation refers specifically to "automatic grant adjustments" and not to termination of benefits. Since the regulations expressly exempt this one circumstance in which a hearing before grant adjustments is not required, the Court infers that a hearing before reduction or termination is required in all other situations. Therefore, the Court finds that neither AFDC-Foster Care payments or Title XX social services should have been terminated by defendants until plaintiffs had been accorded the procedural protections of 45 C.F.R. § 205.10(a).

It is true that although plaintiffs were eligible for AFDC-Foster Care, all payments were made with state funds; and therefore, with respect to foster care payments, there was no program participation to which the procedural safeguards of 45 C.F.R. § 205.10(a) could attach. However, this fact does not alter the Court's conclusion that state funded foster care benefits cannot be reduced or terminated without written notice and a hearing. Foster care benefits are awarded by the state on the basis of a child's financial need after a finding by the Commissioner of Children and Youth Services that care and protection by the state is necessary. Conn. Gen. Stat.

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[8] Moreover, even in cases of automatic grant adjustment in which a hearing before reduction is not required, the regulations provide for notice and a statement of reasons for the change ten days before the effective date of the action. 45 C.F.R. § 205.10(a)(4)(iii). In this case, defendants failed to afford plaintiffs even this minimal due process safeguard.

§ 17-32(b). The foster parents, and thus, the foster child, depend on this award to provide for basic daily needs. A reduction or termination of foster care payments surely results in hardship for the foster child. The foster parent may even be unwilling to support the child under these circumstances and the child may be returned to the state. Therefore, once a child is found in need of foster care and is placed in a foster home, the child acquires a property interest in foster care payments protected by the due process clause of the Fourteenth Amendment. See *Goldberg* v. *Kelly*, supra; cf. *Mathews* v. *Eldridge*, supra; *Frost* v. *Weinberger*, supra. Any decision to terminate or reduce foster care payments may involve matters of credibility and veracity concerning the willingness of the foster parent to support the child, the financial condition of the child, and whether the child is still "at risk" or "neglected" and in need of foster care. Such issues are best resolved at a hearing. See *Goldberg* v. *Kelly*, supra, *Lee* v. *Thornton*, —— F.2d ——, slip op. at 4734 n.4 (2 Cir. July 2, 1976), *White* v. *Roughton*, supra.

The irreparable harm that may arise from the summary deprivation of this property interest is clear. Foster children depend on foster care payments for their living essentials. Foster parents obligate themselves to care for these children on the assurance that they will receive support from the state. The reduction or termination of payments undoubtedly places a strain on the foster parent/foster child relationship. As a consequence, the child psychologically may feel less wanted and insecure in the foster home.

The proof in the instant case revealed that the change from foster care to AFDC assistance resulted in the plaintiff children receiving over $300 a month less in financial aid. While not causing the children to be deprived of essential food, clothing, and shelter, this loss has materially affected their well-being. Their aunt testified that she is unable to buy

them new clothes or to send them on school trips or summer vacations. Her dire financial condition is reflected in the children's growing sense of dissatisfaction and insecurity in the home. Several of the children have had to make more frequent visits to their psychiatrist and have become less able to deal with stressful situations in school and at home. Moreover, the children have lost the services of a social worker assigned to work with them on a regular basis.

The harm to the named plaintiffs and deprivations to other members of the class appear to be severe. As the Court said in *Goldberg*, "the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in fiscal and administrative burdens." 397 U.S. at 266; see also *Maltern* v. *Weinberger*, 519 F.2d 150 (3 Cir. 1975); cf. *Frost* v. *Weinberger*, supra. Therefore, the Court finds that plaintiffs have shown a probable likelihood of success on the merits and irreparable harm to themselves and the plaintiff class sufficient to warrant preliminary injunctive relief.

The procedures for notice and hearing set forth in the federal regulations, 45 C.F.R. § 205.10, are illustrative of the process due recipients of foster care upon reduction or termination of benefits. The Court concludes that due process in this context requires an opportunity for a hearing before agency action which provides the following safeguards:

1) timely and adequate notice to the foster parents of the reasons for reduction or termination;

2) an opportunity to confront and cross-examine adverse witnesses;

3) an opportunity to present their own evidence and arguments;

4) an opportunity to retain counsel or have the assistance of a friend, if the foster parents desire;

5) an impartial decision-maker;

6) a written statement of the decision which gives reasons and a summary of the evidence relied on;

Accordingly, the plaintiffs' motions for class certification and a preliminary injunction are granted. The Court hereby orders that defendants are restrained from:

1) failing and refusing to reinstate the named plaintiffs as recipients of foster care benefits and social services until they are provided with legally sufficient notice and a hearing as described above;

2) reducing or terminating foster care benefits to members of the plaintiff class until they are provided with notice and a hearing as set forth above;

3) reducing or terminating social services to members of the plaintiff class who are recipients of social services under Title XX of the Social Security Act, 42 U.S.C. § 1397, without prior notice and an opportunity to be heard which satisfy the requirements of 45 C.F.R. § 228.14 as specified in 42 C.F.R. § 205.10.

SO ORDERED.

Dated at New Haven, Connecticut, this 26th day of November, 1976.

ROBERT C. ZAMPANO
*United States District Judge*

SUPERIOR COURT

COUNTY OF NEW HAVEN

December 3, 1975

No. 14 35 60

IN RE: APPEAL
FROM JUVENILE COURT

## MEMORANDUM OF DECISION ON APPEAL FROM JUVENILE COURT

The proceedings leading to the present appeal began with petitions of the Commissioner of Welfare (hereinafter, the Commissioner) to the Juvenile Court. In the petitions, which were dated January 17, 1974, the Commissioner alleged that each of the respondents' four children was then "uncared-for in that: He [or She] is homeless. The mother is presently an inmate at Niantic Women's Prison. The father is living alone and working full-time. This [His?] income and circumstances do not permit him to provide a home for his children." The respondent-father admitted the allegations of the petition; the respondent-mother, however, did not, her claim being that the children are not "uncared-for" within the purview of that phrase as used in Gen. Stat. § 17-53.

When the petition was filed, and at all relevant subsequent times, the children were being cared for by their grandaunt, Mrs. Scott. They had been placed with her on April 1, 1973, by the welfare department, with the consent of the respondent-father. That department had been assisting him to care for the children after the respondent-mother had been sentenced to Niantic, in December, 1972, following her conviction for armed robbery. When Mrs. Scott took the children, there had been no adjudication that they were either uncared-

for or neglected, and no proceedings were then pending to obtain such an adjudication.

After the petitions had been brought, a series of hearings was held and briefs were filed. On February 28, 1975, the Juvenile Court entered an order committing the four children to the Commissioner. This order was entered pursuant to an adjudication made by the Juvenile Court on January 3, 1975, that the children "are uncared-for."[1] (Tr. Jan. 3, 1975, p. 3). At the hearing at which that adjudication was made, the assistant attorney general, appearing for the Commissioner, said, "There is no question about the [Scott] home situation where the children are now. Everybody is agreed that it is a good situation for them and there is no dispute on that fact here." (Tr. Jan. 3, 1975, p. 3). In confirmation of that statement, the up-dated Social Summary, prepared for a hearing on disposition on January 30, 1975, says:

> Mrs. Scott continues to provide an excellent home for these children. She is providing for them a warm, secure environment for the first time in their lives. The biggest problem has been interference in her role of caretaker by Mrs. Sockwell's extended family and friends . . . (p. 1)
>
> [The children's] only chance of becoming normal, productive members of the community lies in their remaining for the present in a warm, accepting environment, and receiving the necessary support through therapy and the production of the Welfare Commissioner through the the supervision of the Department of Children and Youth Services. We feel that this goal cannot be achieved, or

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[1] Although the Order of Commitment of the Juvenile Court contains a finding that each child "is an uncared for-neglected child," the printed word "neglected" should have been deleted from the order. The Juvenile Court expressly noted "(N)ot neglected just uncared-for." (Tr. Jan. 3, 1975, p. 3). Further, the Commissioner does not claim the children are neglected.

> even attempted unless they remain for the present in their current home. (p. 3)

From this Social Summary, as well as from the quoted comment of the assistant attorney-general, it is apparent that the children are neither uncared-for nor homeless. Indeed, there is no evidence in the Juvenile Court proceedings that does not tend to prove that Mrs. Scott provides a good home for the children and takes good care of them. Nevertheless, the Commissioner claims that the Juvenile Court could properly find that the children are uncared-for and homeless within the purview of Gen. Stat. § 17-53. His claim is that the children are "uncared for" because their mother is not taking care of them and is not providing a home for them, and because their father has, either inferentially or explicitly, admitted that he cannot take care of them or make a home for them. The Commissioner's claim, in short, is that the phrase "uncared for" in Gen. Stat. § 17-53 should be construed as if it read "uncared for by each living biological parent."

There are three reasons why this construction of the statute should not be adopted. First, that construction requires the court to legislate into the statute significant words that are not there. Second, if a child is being properly cared for by, for example, a close relative at the request of a biological parent, the Commissioner's construction would require the court to say that a child is "uncared-for" when, in fact, the child is "cared for." See, e.g. *Painter* v. *Bannister*, 140 N.W. 2d 152 (permanent custody of seven-year-old boy awarded to 60-year-old maternal grandparents, who had been asked by father of boy to take temporary charge of him following death of the boy's mother). That construction would, therefore, lead to "possibly bizarre results," and a construction leading to those results should not be adopted. See *City Savings Bank* v. *Lawler*, 163 Conn. 149, 159. Third, the Commissioner's construction would have the undesirable consequence of dis-

couraging biological parents from even temporarily entrusting their children to someone who could give them better care, for, under the Commissioner's construction, even temporarily entrusting children to a non-biological-parent to enable the children to be better cared for would make the children "uncared for" and subject to commitment to the Commissioner.

Even if these three reasons did not exist for not adopting the Commissioner's construction, there is yet another reason why the court should not adopt it. That reason is that, in construing a statute concerning the relationship of children to biological or non-biological parents,[2] courts should prefer that construction that minimizes state intervention. The reason for preferring the minimal-state-intervention construction has been well expressed in a recent work on problems in child-custody.

> Though obvious once said, when left unsaid, the limitations of law often go unacknowledged in discussions about child placement. Too frequently there is attributed to law and its agents a magical power — a power to do what is far beyond its means. While the law may claim to establish relationships, it can in fact do little more than give them recognition and provide an opportunity for them to develop. The law, so far as specific individual relationships are concerned, is a relatively crude instrument. It may be able to destroy human relationships; but it does not have the power to compel them to develop. It neither has the sensitivity nor the resources to maintain or supervise the on-going day-to-day happenings between parent and child — and these are essential to

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[2] J. Goldstein, A. Freud, and A. Solnit in *Beyond the Best Interests of the Child* (1973) write of the two aspects of parenthood — biological parenthood and psychological parenthood. The latter describes the person to whom the child is emotionally attached as a result of that person's "attention to [the child's] needs for physical care, nourishment, comfort, affection and stimulation." p. 17. A non-biological parent may, of course, be a psychological parent.

meeting ever-changing demands and needs. Nor does it have the capacity to predict future events and needs, which would justify or make workable over the long run any specific conditions it might impose concerning, for example, education, visitation, health, care, or religious upbring. We share the view — one which is too easily upbringing. We share the view — one which is too easily — of Justice Wachenfeld:

> The uncertainties of life . . . will always remain to be encountered as long as one lives. . . . Their devious forms and variations are too complicated and numerous to be susceptible of tabulation. Our inability to predict or solve them anchors us closely to nature's intendment. . . .
>
> A judicial approach does not make the future more readily forseeable and the assurance of our decisions, whatever it be, is unfortunately circumscribed by the frailties of human judgment.

The law, then, ought to and generally does prefer the private ordering of interpersonal relationships over state intrusions on them.[3]

J. Goldstein, A. Freud, A. J. Solnit, *Beyond the Best Interests of the Child* (1973), p. 49.

This preference for non-intrusion is reflected in several of the authorities cited by the respondent-mother in her briefs. For example, in *Diernfeld* v. *People*, 323 P. 2d 628, 631, (Colo.) the court said, "If the person in whose care the child is placed assumes the responsibility, is not being imposed upon, and there is no dispute among persons entitled to the custody of the child, the jurisdiction of the court cannot be

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[3]For the source of the quotation by Justice Wachenfeld see Goldstein, Freud & Solnit, cited in note 2, supra, at p. 147, n. 33.

invoked and the state is not concerned in the matter." (mother's conviction twice for felony not sufficient to invoke jurisdiction of juvenile court where child was being taken care of by grandmother). Similarly, in *In re State In Interest of Valdez*, 29 Utah 2d 63, 504 P. 2d 1372, the court noted that the Juvenile Court is created by statute and that its jurisdiction concerning custody is strictly limited to those situations where the statue permits it to be invoked. 504 P. 2d 1374. (father who had been incarcerated for killing mother made arrangements with maternal aunt and uncle to care for children; juvenile court held to have no jurisdiction in absence of proof that statutory condition, that child is "homeless or without proper care through no fault of his parent, guardian, or custodian," had been met).

There is one further consideration. When the children were committed to the Commissioner, they had been with Mrs. Scott for almost two years. She had established conclusively that her "caring for" them was not a temporary activity but the result of a relationship and concern of proven durability. When the children were entrusted to her care, the oldest was not quite eight years old and the youngest was two-years-and-eight-months. The other two were, respectively, five years old and six-years-and-eight-months. To children of those ages, two years is a time-span of far greater significance than it is to adults.[4] New and lasting attachments can be formed under those circumstances, and, all parties seem to agree, have been formed in this case. The depth of that attachment has been reflected in the high praise given to Mrs. Scott in the Social Summary and in the general agreement that the children have an excellent home and received excellent care with Mrs. Scott. Whatever merit there may be in the Commissioner's construction of the phrase "uncared for" in other situations where care is not being provided for by the biological parent, the facts

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[4] See Goldstein, Freud, & Solnit, cited in note 2, supra, at p. 40.

with respect to these children and the care they have received make them not "uncared for," as a matter of law, within the meaning of that phrase in Gen. Stat. § 17-53.

The only authority cited by the Commissioner, *In re Appeal of Kindis*, 162 Conn. 239, is inapposite. In that case, the children were committed to the Commissioner in 1963. Six years later, their mother filed a petition seeking revocation of the order of commitment, claiming that "cause for commitment no longer exists." The Juvenile Court considered the circumstances "which presently prevailed in the parental home," (p. 244) and concluded that "cause for commitment" continued to exist. That case thus decides that, if there was an originally-valid "cause for commitment," the circumstances to be considered in determining whether that cause continues to exist are the circumstances in the parental home and not the circumstances in the foster home. In this case, the question is not whether an orginally-valid "cause for commitment" continues to exist but whether an originally-valid "cause for commitment" ever existed.

The court is not unmindful of the evidence that some of the children may have had, and may still need, psychiatric and special education services. It is clear from the evidence, however, that the need for those services arose out of events that occurred before Mrs. Scott began taking care of the children. Further, there is no reason why, if the children do still need those services, those services cannot be provided for them without committing them to the custody of the Commissioner. The issue in this case is, however, not whether they are in need of those services from the Commissioner and other appropriate state agencies, but whether the present status of those children justifies their being classified as "uncared for" within the purview of Gen. Stat. § 17-53.

Nor is the court unmindful of the possibility that the respondent-mother may in the future attempt to regain cus-

tody of the children. If that happens, and litigation results, the court will then have to determine where the best interests of the children lie. If there is no litigation, and the mother-respondent, after taking custody of the children, fails to provide them with adequate care, there is ample statutory authority for then invoking the jurisdiction of the court. There is a suggestion in the record that a dissolution-of-marriage proceeding has been instituted between the respondent-mother and respondent-father. If such a proceeding is pending, there is statutory authority for third-party intervention with respect to custody and for the appointment of an attorney to represent the children. See Gen. Stat. §§ 46-47 and 46-43. At this stage in the proceedings, however, all of these possibilities lie in the future, and the issues they would present are not the issues to be decided in the present case.

The appeal is sustained and judgment may enter vacating the order of the Juvenile Court committing the children to the Commissioner of Welfare.

RUBINOW, *J.*

COPY

## STIPULATIONS OF FACT

1. The four plaintiff children were originally placed in the home of Mary Scott under a voluntary placement in April, 1973. At that time, the children were under the non-committed child program, which is not reimbursable by the Federal government.

2. On May 16, 1974, the four children were committed to the custody of the Commissioner of the Department of Social Services (DSS), and thus came under the AFDC-Foster Care (AFDC-FC) program of the state of Connecticut, which operates pursuant to Title IV-A of the Social Security Act.

3. Due to a clerical error and contrary to routine procedures of the DSS, no voucher for Federal reimbursement for these children was submitted to the Department of Health, Education and Welfare for reimbursement. As a result, no Federal funds have been received for the care of these children.

4. It is the practice of the Department of Social Services when such an error is discovered to correct the error and request the available Federal reimbursement.

5. From October, 1975, through April 15, 1976, the four children received services, including counseling, through the Federal Title XX services program.

6. Defendant Commissioner of the Department of Children and Youth Services (DCYS) terminated foster care benefits to plaintiff children effective May 15, 1976.

7. The children were terminated from the foster care program without written notice or any written explanation of

the grounds of termination, and without any opportunity for a hearing on the decision.

(*Initialed by counsel*)

8. Written requests on their behalf for written notice and a hearing prior to termination of benefits were sent to both DSS and DCYS in April 1976. The requests were denied.

9. There is no DCYS nor DSS policy which requires prior written notice or a hearing on the termination of foster care benefits.

10. Prior to May 15, 1976, Mary Scott and her daughter Sharon Scott received AFDC benefits of $234 a month. When the plaintiff children's foster care benefits were terminated, Mary Scott applied for AFDC benefits for them. They were added to her AFDC unit. The monthly benefit for the present unit of six is $450.

11. The addition of the four Sockwell children to the Scott family AFDC unit resulted in an increase of $216 a month.

12. While they were receiving foster care benefits, three of the plaintiff children were receiving $133 monthly; the youngest received $127 a month, for a total of $527 for the four children.

13. The result of the children's termination from foster care and their addition to the Scott family AFDC grant was a net monthly loss to them of approximately $311.

14. The level of monthly benefits under the foster care program is based upon a calculation of need by DCYS.

Documents to be admitted:

Letters of April 1 and April 5, 1976, from Elizabeth Phillips to DSS and DCYS requesting written notice and hearing prior to termination of foster care benefits.

ADDED BY STIPULATION:

15. When Judge Rubinow on December 3, 1975, sustained the juvenile court appeal, the children were no longer committed, and AFDC-FC funds were no longer available to the state.

16. Mary Scott was on AFDC with one child when the Sockwell children came to live with her.

17. The Sockwell children presently on AFDC are eligible for Title XIX and Food Stamps.

ORIGINAL SIGNED BY ATTORNEYS ALICE LEONARD, EDWARD MATTISON, AND FRANCIS MacGREGOR.

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
PUBLIC ASSISTANCE
HARTFORD

In Re: Request of Mary Scott for Sockwell children
56 Daggett Street
New Haven, Conn.
Case No. 92-C-827281

For fair hearing because of discontinuance of foster care and reduction in money payment.

June 25, 1976

Present: Mary Scott, Appellant;
Attorney Edward Mattison, Attorney for the children;
Attorney Alice Leonard, Attorney for the children;
Elizabeth Phillips, Senior Social Worker, Hill Health Center;
Ruth Morris, Case Supervisor;
Al Brill, Fair Hearing Liaison;
William Kane, Fair Hearing Officer

## MEMORANDUM OF DECISION

Mary Scott, of New Haven, Connecticut, also referred to as the appellant, was aggrieved because of discontinuance of foster care and reduction in money payment and made request for a fair hearing as outlined in Sections 17-2a and 17-2b of Connecticut General Statutes by means of a letter dated 4-6-76.

Pursuant to said request, a fair hearing was held before the undersigned, at the New Haven District Office of the Department of Social Services, on 6-21-76, of which due notice

had been given and at which hearing the appellant was present and the case was fully heard. The right to appeal the hearing decision within thirty days to the Court of Common Pleas was made known.

*A: FOR THE DEPARTMENT OF SOCIAL SERVICES & CHILDREN AND YOUTH SERVICES*

The appellant is presently supervising relative for four children. These children were committed to the Commissioner of Welfare on 2-28-75. An appeal was filed on 3-7-75 and on 12-3-75 the Superior Court vacated the order of the Juvenile Court. The appellant up until this time had been receiving board payments from Child Welfare. The Department of Children and Youth Services decided to discontinue funds as the family was no longer eligible. A conference was held on 3-4-76 and it was decided not to reopen the case at Juvenile Court. The appellant's case under Children and Youth Services was officially closed 3-31-76. The children were granted AFDC with the appellant as supervising relative effective 4-1-76.

At the time of the discontinuance of foster care payments the children were receiving $527.50. As of 4-1-76 the appellant's AFDC award has been increased from $234.84 to $450.81 to meet the needs of the four children added to the AFDC award.

It was the agency's opinion at the hearing that no advance notice of discontinuance was necessary since the funds were from 100% state funds.

*B: FOR THE APPELLANT*

The children's representative argued that three services were actually discontinued. The first was the discontinuance of the Foster Care payments. The second services offered

under Title XX and third a discontinuance of AFDC-FC benefits.

The attorney argued that no notice of discontinuance from these programs was ever sent to the appellant and that this was contrary to Volume I, Chapter II, Index 2330 of the agency's policy. This policy is based on Title 45 CFR Index 205.10 which also speaks to the need for an evidentiary hearing and those circumstances under which a right to advance notice is not needed. The attorney also noted that the reason for discontinuance must be given and appropriate policy and regulations cited.

The appellant's representative further argued that the Department of Social Services is the agency responsible for all funds dispersed to meet the needs of the children whether or not these services are provided by Children and Youth Services or another agency.

The appellant is also concerned that with the cessation of services by DCYS that the appellant is now very vulnerable in her ability to care for the children without interference from the natural mother.

The attorney submitted several documents in evidence including a copy of the initial Agreement for Board and Care of Children Committed to the State Welfare Commissioner emphasizing that the agreement can only be cancelled by the children being removed from the home. The attorney also submitted copies of Volume II, Chapter IV, Index 310 and 355.2 regarding basic principles of foster care and financial arrangements for care of children.

*C: PERTINENT STATE STATUTE*

Section 1-32 of the General Statutes provides the regulation that authorizes the Commissioner of Social Services to

provide assistance to those children who need protection and care from the State.

Section 62 of the General Statutes provides the regulation that authorizes the Commissioner of Social Services and/or the Commissioner of Children and Youth Services to assume responsibility for the care of such children placed in his care by the Juvenile Court.

Section 82d of the General Statutes authorizes the Commissioner of Social Services to provide assistance in order to support a family in health and decency under the Aid to Families with Dependent Children.

*D: PERTINENT AGENCY POLICY*

Volume II, Chapter II, Index 100.11 provides the criteria for determination of eligibility for the AFDC - FC program.

Volume II, Chapter IV, Index 355.2 provides the guidelines for establishing financial arrangements for the care of children who are wards of the State.

Volume II, Chapter IV, Index 310 provides the policy in reference to the principles of foster care.

Volume I, Chapter V, Index 5020 provides the eligibility requirements for the AFDC program and the standards of need.

*E: FINDING OF FACT*

1. The four children were committed to the Commissioner of Social Services in 2-75.

2. The commitment order was vacated as of 1-13-76.

3. The children's needs were met under foster care payments until 3-31-76 when the children were granted AFDC benefits.

4. Services provided by DCYS were also terminated as of 3-31-76 as the children became active under AFDC and services under AFDC are rendered upon request.

5. As of 1-13-76 the Commissioner of DCYS was no longer empowered to act as guardian for the four children whose order of commitment was vacated.

6. The children were never placed on the AFDC-FC program during their commitment or prior to their commitment.

7. For the period 1-76 to 3-76 the children would not have been eligible for the AFDC-FC program as they were no longer committed children or was there a plan to commit.

*F: CONCLUSION*

While it is true that during the period of commitment that the children would have qualified for the AFDC-FC program this was not done. This program however would have had to have been discontinued as of 1-13-76 when the commitment order was vacated. As of that date all foster care payments were from State funds. There is no provision for an evidentiary hearing prior to termination of these funds. The role of the Department of Children and Youth Services as guardian of these children also terminated with the order vacating the commitment. At the present time the children are eligible under the AFDC program and the appellant is of acceptable degree of relationship to make this program valid.

*G: DECISION*

1. The Department of Children and Youth Services is upheld in the discontinuance of foster care payments as of 3-31-76.

2. The Department of Children and Youth Services is upheld in the discontinuance of services to the family as of 3-31-76.

3. The Department of Social Services acted correctly in granting AFDC benefits as of 4-1-76 when foster care payments ceased.

WILLIAM KANE
*Official designated to hold fair hearing*

WK: mm
cc: John Harder
District Director
D.O. #2 - New Haven

cc: Attorney Edward Mattison
cc: Attorney Alice Leonard

Transcript, page 45

Q. The Sockwell children, when they were on foster care, would have been entitled to Medicaid, that's Title 19; is that correct? A. That's correct.

Q. If there wasn't a high household Income, they would be entitled to food stamps; is that right? A. Yes.

Q. They would be entitled to social services under Title 20; is that right? A. Yes.

Transcript, page 36

Q. Once a child is committed, the child is now taken care of by a children service worker; is that correct?
A. That's correct.

Q. And the protective services worker gives the file to the children services worker; is that correct?
A. That's correct.

Q. Once the child ceases to be committed by a judicial commitment, if it is still a problem of neglect and somebody has to see if the child goes back to the parent, it may well go back to protective services; is that correct? A. If the commitment has been revoked or vacated, if a new referral comes in and there is a need to file petitions, this can be done.

Q. It could go back to protective services?
A. It could go back to protective services.

Transcript, page 18

Q. Are you familiar with the fact that Judge Rubinow's decision found that the children were not uncared for and that he sustained the mother's appeal from the Juvenile Court; is that correct? A. Yes.

Q. After this meeting of January 13, 1976, or at this meeting, did Mrs. Morris or anybody that represented the Department of Finance and Control or the Department of Youth — Department of Children and Youth Services, tell you they would probably have to discontinue foster care payments, and have Mrs. Scott apply for AFDC?

A. That did come up, yes.

Transcript, pages 18, 19

Q. When you heard that as a result of this meeting of December 13th of 1976, that Mrs. Scott may not only receive AFDC payments, did you ask Mrs. Morris if there could be a delay because you were going on vacation?

A. No, I didn't at that time, exactly. What happened was that some time later in January it came up and it was just before I was going on vacation, yes, that did — but I don't think that was at the meeting with Mr. Myrun.

Q. You asked for a delay; right? A. Right.

Q. You wrote a letter, didn't you? A. I asked for a delay in order to make a case which would indicate that these children would be deeply affected by this and I wrote a letter to that effect which you may have a copy of it.

Transcript, pages 37, 38

Q. You said that somebody before this meeting of January 13, 1967, with Mrs. Phillips, went to see Mrs. Scott and — A. The case worker, yes.

Q. And who was that? A. Miss Dixon.

Q. Tina Dixon? A. Yes.

Q. And told her because of Judge Rubinow's decision, that the foster care payments would probably have to be stopped; is that right? A. That's right.

Q. And did she tell her at that time she was eligible for AFDC? A. Yes, she did.

Transcript, pages 46, 47

Q. When Mrs. Scott became eligible for AFDC, did she continue to be eligible for Title 19 Medicaid payments?
A. Yes.

Q. Would she in fact keep the same card and there would be no real reason to change cards, would there?
A. Technically they would be issued under the AFDC number instead of the old child welfare number.

Q. Any services that were needed during this change she would get? A. She would get the services.

Q. Would she be entitled, because they are on an AFDC, categorical assistance program; isn't that right?
A. That's right.

Q. And because she was on AFDC, would she be entitled to food stamps? A. Yes.

Q. In the testimony here, is that the AFDC payments to Mrs. Scott, are lower than the foster care payments, would it be very possible that she would get a larger food stamp bonus? A. Possibly.

Q. On AFDC, because it's a categorical program, are they automatically entitled to all — to Title 20 social services? A. Yes, they are.

THE COURT: Would you repeat the question?

(The pending question was read back by the reporter.)

THE COURT: Without special application?

THE WITNESS: That's right.

Transcript, pages 87, 88

Q. How long were you on aid to families with dependent children before the Sockwell children came to live with you? A. Just me and my daughter.

Q. How long? A. About four years, I guess.

Q. During that four years, did you have any other income besides aid to families with dependent children during that four years? A. No, just me and my daughter.

Q. Were you deprived of the very means by which to live during that four year period you had to live on aid to FDC?

MS. LEONARD: Objection. Totally irrelevant to anything in issue here today.

THE COURT: She is claiming that she is having great difficulty surviving on AFDC monies now being given her, and I suppose he is probing to see how she got along on AFDC without the Sockwell children.

MS. LEONARD: I would submit that the money that's in issue today is the benefits to the foster chair children, not to any benefits that Mrs. Scott or her daughter received either prior to the time or at this time.

THE COURT: That may be, but he is probing her financial condition. Obviously, however the Court knows whether you are on AFDC or middle class or upper middle class or wealthy, the more money you have, unfortunately, the better life you can have and the more things you can provide for yourself and your family, but I will let him probe her financial needs prior to the Sockwell children being admitted into the home.

How were you getting along on AFDC prior to the Sockwell children coming in?

THE WITNESS: Without them?

THE COURT: Without the children.

THE WITNESS: Well, it was rough getting them, things wasn't like it is now. It was rough.

BY MR. MacGREGOR:

Q. You got along, though, didn't you? A. Yes.

Transcript, pages 92, 93

Q. When Marcia wanted the money for the trip, the teacher got the money for the trip? A. She lent me the money.

Q. Did you pay her back? A. Yes.

Q. So you were able to pay her back? A. Yes.

Transcript, page 9

Q. Do you recall the question? I would like to have you comment on the particular impact this has had on these children. A. The children are very upset because a number of things are going to be happening to them, such as they are not going to be able to go south for a vacation, which was planned.

THE COURT: When is that planned?

THE WITNESS: It was planned for the summer.

Transcript, pages 5-11

THE WITNESS: Elizabeth Phillips. My work address is 428 Columbus Avenue.

DIRECT EXAMINATION BY MS. LEONARD:

Q. Mrs. Phillips, would you state for the Court your profession, please? A. I am a psychiatric social worker.

Q. How long have you been a psychiatric social worker?
A. Almost thirty years.

Q. Could you tell the Court what degrees you hold?
A. I hold a Masters in Social Work from Columbia, and I hold a Masters in Public Health from Yale.

THE COURT: Try to keep your voice up.

Q. Can you tell us, please, what your professional experience — what type of work your professional experience has led you to? A. I have been in child guidance, I have been in family service agencies where I have done family counseling, marriage counseling, group therapy. I have done group therapy with children. Largely clinical work. I have done supervision, some administrative work.

Q. What is your present position? A. I am senior supervising social worker in the mental health service department of the Hill Health Center.

Q. That is here in New Haven? A. Yes. It's a comprehensive health clinic for the Hill.

Q. What does your work at the Hill Health Center involve? A. I have a treatment load which means that I see some children in therapy and some adults in therapy. I see some families where I am the family counselor and see them wherever there is a need.

I supervise four workers. I do a little administration. I do some program planning.

Q. In this job at the Hill Center, do you have occasion to work directly with foster children? A. Yes, I do, both directly and indirectly.

Q. What do you mean by indirectly? A. I supervise people, other social workers who work with foster children and I am also involved with inter-disciplinary treatment where pediatricians, psychiatrists and nurses meet together twice a week, an hour each twice a week, with foster — where foster children, among other children, are discussed.

Q. Are you acquainted with the plaintiffs, the four Sockwell children? A. Yes.

Q. How long have you known them and in what capacity have you known them? A. I have known them since March of 1973, and I first knew them as clients who came needing pediatric care and the pediatrician saw the enormous social problems that were going on in the family and involved me to consult with him about what we might do to help the children.

Q. Would you give the Court your professional opinion as to whether the Sockwell children are typical of foster children in general? A. The Sockwell children are very damaged children and in my professional opinion most foster children are pretty damaged children.

Q. Could you briefly tell us in what respects they are damaged children? A. Well, these children, these particular children were battered children. They had been left alone without supervision. One of them had been hospitalized for malnutrition. Two of them were extremely emotionally disturbed. They were all in need of medical care. They had had no immunization. They were in need of all services.

Q. Is this a condition or situation that you would find typical of other foster children?

MR. MACGREGOR: I think she already answered it.

THE COURT: Now we are being more specific. She said that many foster children are damaged. Now we are getting very specific about being battered, left alone, and suffering from malnutrition.

Objection is overruled.

BY MS. LEONARD:

Q. I will repeat the question. Are these problems that you have identified problems that you would find typical of other foster children? A. Yes.

Q. Mrs. Phillips, do you know of your own knowledge whether the Sockwell children are still receiving foster care benefits from the State of Connecticut or are they on the foster care program today? A. No.

Q. Do you know whether their termination from the foster care program has involved a financial loss to them?

A. Yes, I do.

Q. Can you give us your opinion as to whether a financial loss such as they have suffered would have an impact on these children? A. Yes, it would, and it has.

Q. What would you describe that impact as?

A. Well, first of all, these kids' security is based on the security of their foster mother. These kids never had a home until they went to Mary Scott, and in Mary Scott's home they found security. She is now insecure.

MR. MACGREGOR: I would object unless there is a business record here, because I would assume that any

claims of insecurity would be from conversations with Mary Scott, and I don't see any business records with the witness here, and if that's the — there is no business records to refer to that come in under the business entry rule, I would say what she is saying is hearsay.

THE COURT: Opinion evidence can be based on personal observation, reading documents written by others, and hearsay.

Objection is overruled.

BY MS. LEONARD:

Q. Do you recall the question? I would like to have you comment on the particular impact this has had on these children. A. The children are very upset because a number of things are going to be happening to them, such as they are not going to be able to go south for a vacation, which was planned.

THE COURT: When is that planned?

THE WITNESS: It was planned for the summer. One of the children, Renee, we have recently taken into child therapy so that we know the feelings of insecurity which she has. I am supervising her therapy as a social worker.

BY MS. LEONARD:

Q. Can you tell us whether the impact that you describe would be an immediate impact or a long range impact? A. Well, both. There is an immediate impact which is the shock that this has to the family, but the long range impact is that these kids have in only the last three years been able to build up any trust in anyone, and their trust is based on the security they have gotten from this home and the protection they got from Protective Service

first and from Foster Home later, which was a significant addition to the family.

THE COURT: I have two questions. Is it Miss or Mrs.?

THE WITNESS: Ms.

THE COURT: Ms. Phillips, did the services you rendered to the children and the services rendered by the Hill Health Center depend on payments from Mrs. Scott derived from foster care, from the foster care program, or would you continue to give these services to these children, that is, your professional services, whether or not she received foster care money?

THE WITNESS: Yes. Our services are not connected with foster care. They are connected with the Medicaid Program.

THE COURT: To your knowledge, has that been discontinued also by the change in their status?

THE WITNESS: No.

Transcript, pages 12-16

THE COURT: Very well. Anything else? I interrupted you. You were telling us what the immediate impact and the long range impacts were, and you mentioned Protective Services, and then I interrupted you.

Any others?

THE WITNESS: I would expect these kids would regress to their previous level of behavior.

MR. MacGREGOR: I would object and ask that be stricken. That would seem to me to be a medical determina-

tion based on reasonable medical probability and, first, she hasn't even used that term. She is a psychiatric social worker and I think we are talking about a psychiatric regression.

I don't know what her expertise is, but she hasn't put forth —

THE COURT: I take it that is your opinion as a psychiatric social worker; is that correct?

THE WITNESS: Yes.

THE COURT: I will admit it subject to cross-examination. It goes to weight and not admissibility.

BY MS. LEONARD:

Q. Mrs. Phillips, you have not described for us emotional effects on these foster children that will come from a financial deprivation. I would like you to tell the Court whether such effects would take place for foster children generally as well as these particular children from a financial deprivation such as we have described here this morning.

A. My professional opinion, there would be similar insecurities and, therefore, similar damage.

THE COURT: You see, I'm trying to tie down, Mrs. Phillips, exactly what the financial deprivation causes. The only thing that I have is lack of a vacation in the summer. You did mention certain very valuable services that apparently you are rendering, but you are saying you are going to continue this and you did mention supervision under protective services, which has been discontinued.

THE WITNESS: Right. I think I can tell you other —

THE COURT: If there are any more.

THE WITNESS: — what the financial impact would be. These children will not be clothed as they are clothed now.

There is a large question of whether the rent item —

MR. MacGREGOR: I object unless — this seems to be a conclusion, they are not clothed. On what basis does she make that, merely the fact there is less money, or somebody has asked — said that.

THE COURT: That will go to cross-examination. You can certainly bring out her knowledge, whether or not that is a factor and whether or not there are other governmental agencies that would step in if that were a fact, but let's get the list. You think clothing might be affected, the lack of vacation.

What else?

THE WITNESS: And I think that their shelter —

THE COURT: Shelter problems?

THE WITNESS: Yes. I think that the budget will not cover, for example, their fuel. They are already building up an enormous fuel bill.

THE COURT: You may proceed.

MS. LEONARD: Your Honor, I might ask Mrs. Phillips to redescribe what she sees as the effect of this financial deprivation upon Mrs. Scott and, therefore, upon the children.

I believe that was your testimony.

MR. MacGREGOR: I would object to Miss Scott — she is not a plaintiff in the case. There is no claim made by Miss Scott — Mrs. Scott. She is not a named plaintiff.

MS. LEONARD: My question is to the effect of the financial deprivation on the children. Any way this financial deprivation affects them is before the Court.

THE COURT: Yes. The question is: Other than what you have already mentioned, are there any other deprivations that come to mind?

THE WITNESS: Did you want me to answer her question?

THE COURT: Her question is the same as mine, but I added other than what you have already said, because I already heard what you said.

THE WITNESS: This foster mother is just extremely nervous and telephones me all the time, and says, "How am I going to make it?" and this conveys to the children —
BY MS. LEONARD:

Q. I want to return to the final question about whether these effects would be typical of all foster children and not just these. I would like to ask you whether the effects on foster children in general would be immediate or only accumulative over time? A. In my professional opinion, both, that there would be an immediate impact, and then over time a continued impact.

Transcript, pages 25-31

RUTH MORRIS, called as a witness, having been first duly sworn, testified as follows:

THE CLERK: Please state your name and address?

THE WITNESS: Ruth Mary Morris, and my business address is 464 Congress Avenue, and I work for the Department of Children and Youth Services.

DIRECT EXAMINATION BY MS. LEONARD:

Q. Mrs. Morris, can you tell us what your position is at DCYS? A. I am a case supervisor in the Children Service, of which we supervise children in foster care and in institutions. These are the children who have been adjudicated as uncared and neglected.

Q. The Court nor the rest of us is terribly familiar with the setup of the foster care program. You would be the supervisor for the case workers that work with each foster care child? A. That is correct.

Q. How long have you been with the program?
A. With the department?

Q. Yes. A. I will have been with the department nineteen years in August of this year.

Q. Mrs. Morris, you are familiar, are you not, with the levels of foster care benefits that go to children in the State of Connecticut? A. Yes, I am.

Q. Is it true that the benefit levels are determined on calculations of need made by the Department for Children?
A. Yes. They have been calculated according to age and in other situations it depends as to whether or not a child is, a child who is somewhat difficult, who might have emotional problems and, therefore, is causing, you know, some concern to the foster parents, so in order to avoid removal of the child, so that the foster parent can continue to care for this child, we might pay a higher rate.

Q. Speaking specifically about the basic rates that's given to foster care children, what is that monthly budget comprised of? A. It's comprised of the board, the clothing, and the personal allowances which is cut off at the age of fifteen, the personal allowance.

Q. It is true, is it not, Mrs. Morris, that those benefits are often, if not generally, supplemented by foster care parents on behalf of their children? A. Sometimes this occurs.

Q. Mrs. Morris, did there come a time last fall when the case workers whom you supervised, filled out forms which are called Title 20 inside agency face sheet forms? A. Right.

Q. You recall those forms? A. Yes, I do.

Q. Now, do you recall whether those forms indicated the present case status of the children for whom the forms were completed? A. The case status at that time occurred October 1, 1975, and at that time the children in question were still under care.

Q. Do you recall for the Sockwell children whether this Title 20 Inside agency case face sheet form indicated that the Sockwell children were, as of that time, AFDC Foster Case recipients? A. No, they were not. They were not AFDC recipients at that time.

Q. I would like to refresh your memory by showing you the form that we are referring to. A. Going back to your question about —

Q. Whether this form indicates the case status of the recipient child. A. AFDC, "FC" that had been circled, that's the SSIS case status.

Q. With your memory refreshed, Mrs. Morris, would you recall whether these Title 20 inside agency face sheet forms indicated that the Sockwell children were at that time recipients that were on the AFDC Foster Care program?

A. They were on the AFDC-FC program according to the Title 20, your Honor.

THE COURT: They were Title 20 AFDC Foster Care?

THE WITNESS: Yes.

BY MS. LEONARD:

Q. Mrs. Morris, you are aware that the Sockwell children received benefits at the foster care level until May 15th of this year; is that true? A. No; March 31st of this year.

Q. Could you explain that to us? A. That's when the case was closed and financial payments were terminated.

Q. They then began receiving benefits at the foster care level, but from the AFDC program; is that right?

A. No, they were no longer — you see, the day that we received the memorandum in regards to the commitment being vacated by Judge Rubinow, at that time these children were no longer under care but, of course, we realized that this was a total surprise to us, and so the worker did confer with Mrs. Scott to tell her of this, but we did not immediately terminate the case at that point.

Q. Let me just rephrase my question. Are you aware that they received benefits from some source or other that was at the level of their foster care benefits until May 15th of this year? A. Well, all payments are a month behind, so when we terminated, the effective date was March 31, 1976, which entitled Mrs. Scott to receive another full board check in the month of April, and also the worker had advised her as to the time that she would be terminated, the case, in DCYS, so that the foster mother could go to the income maintenance department and have the four children added to her AFDC award. We wanted to synchronize the times so she would not be left without financial support.

Q. Prior to the time that these children were terminated from the foster care program, you had had occasion to speak both to Elizabeth Phillips and Mary Scott about the fact there was this possibility of termination, had you not?

A. You mean the termination effective date of March 31st? Yes. Because after Miss Dixon spoke to Mrs. Scott who in turn spoke to Mrs. Phillips, that's when Mrs. Phillips called and spoke to Mrs. Dixon and later spoke to me, you know, and expressed her concern as to what, you know, this might do to the family.

Q. So your testimony —

MR. MACGREGOR: Would you identify Mrs. Dixon?

THE WITNESS: Mrs. Dixon is the supervisor — was the supervision worker for the children.

BY MS. LEONARD:

Q. Your testimony is that, yes, you had had occasion to speak to Betty Phillips and Mary Scott prior to the termination? A. Not Mrs. Scott. Miss Dixon spoke to Mrs. Scott. I never met Mrs. Scott.

Q. You were never instructed to, by anyone in your family, to give written notice to the Sockwell children or to anyone on their behalf that they could be terminated from the foster care program, were you? A. No, I was not instructed.

Q. And you were never instructed at any time to advise them that they had an opportunity to request a hearing on the termination benefits, were you? A. I couldn't ask them to request a fair hearing, because in DCYS we did not have fair hearings. All that we have is what is known as the administrative case review, and this occurs when a child is

going to be removed from a foster home and foster parents are not in agreement. They can request an administrative case review.

Q. In this situation, leaving the children in the home, but terminating only the benefits, there would be no case hearing under the case review system? A. No, there wouldn't.

Q. Just to make the final point: You then had never been instructed either to give notice or advise them of a hearing, and you never did give written notice or advise them of -- A. We never gave written notice but we never had a hearing. This was not our policy.

Transcript, pages 52-58

Q. Before foster care was switched over from the Department of Welfare to DCYS, were you generally familiar with the program? A. Yes.

Q. Was it the case that then and now, as far as you know, and if there is a difference, you can tell us, that if there was a — if a child was receiving foster care, that there would be a specific worker like Miss Dixon in this case who would be assigned to the family; is that right?
A. That's right.

Q. If foster care was terminated, is there any way then or now that that particular worker could continue to provide services to that family? A. No.

Q. So that if Miss Dixon had established rapport with that family and was providing support, psychological support to that family once foster care terminated, there would be no way she could continue to do it? A. That's right.

MR. MATTISON: I think that, your Honor, is essentially the claim on that.

THE COURT: Very well.

BY MR. MATTISON:

Q. With respect to need, your calculation of the benefits to foster children, is that calculated on the basis of in general, at least, the children's need for those benefits?
A. I believe so.

Q. If a child is committed, if a child is eligible for AFDC payments because of deprivation of one or more parents, or for whatever reason, and is committed by the Court and is in financial need, as far as you know, would that child be eligible for federally reimbused foster benefits? A. Yes.

Q. Is there any — for those children is there any other program of the State of Connecticut of money payment programs for those children? A. Who would be eligible for aid, you're talking about those?

Q. And who are committed in a financial need.
A. No, that's the program, AFDC-FC.

Q. With respect to the differences between federally financed and state financed benefits, with respect to the children who were receiving them, say, would they, if they had went from one to the other and back again, whatever, would they know the difference? Is there any change — A. No.

Q. It's simply a matter of bookkeeping and the making appropriate requests for — A. That's right.

Q. So that — now, if for some reason a person were to make — to object to being discontinued from the foster care — if a person was discontinued from federal foster care

payments, and placed on state payments, they wouldn't know the difference, so they would have no reason to appeal; isn't that right? They would have nothing to appeal? A. Yes.

Q. If they were discontinued from foster care benefits altogether, for whatever reasons, and somehow or other they were able to obtain an appeal — we will go into the procedures later — is there — what is it that the hearing officer would hear — well, let me ask that question differently. Would the hearing officer examine the question of whether federally reimbursed — reimbursements could be obtained in determining whether those children should receive foster benefits or not? A. I don't quite really understand, but he would go into whether they were correctly discontinued or not.

Q. Would he — is it not the case that what the hearing officer would do would be to look at the state regulations which deal with eligibility for foster care and determine if the children fit within those regulations or not?

A. That's right.

Q. And the question of whether there was federal reimbursements or not, he wouldn't even know about?

A. That's right.

Q. Let's go to the hearings. You have stated that it is your legal opinion under 17-2A that any aggrieved recipient is entitled to a fair hearing? A. Yes.

Q. Okay. To your knowledge, prior to the time that foster care moved to DXYS, was there any policy or practice written down, any formalized policy or practice in the department of requiring written notice and information about the availability of such hearings made to recipients generally, foster care recipients generally? A. No, there wasn't.

Q. Do you have any reason to believe that the situation is any different now than it was then? A. There is — you're talking about discontinuing?

Q. Discontinuance. Is there — A. There is a notification that they may have a fair hearing —

Q. I'm talking about discontinuance. A. That's right.

THE COURT: Discontinuance —

MR. MATTISON: There is no such —

BY MR. MATTISON:

Q. Going back to your legal opinion, if a child — actually, in this field, I think you have more right to a legal opinion than most — in the case of a child who was an AFDC-FC, foster child, if such a child were discontinued in your legal opinion do they have a federally statutorially required right to pretermination notice and hearing?

A. AFDC-FC?

Q. Yes. Is there — A. They have a right to a pretermination hearing.

Q. Is there any procedure in DCYS for giving them the written notice required by 205.10, and for holding the pretermination hearings required by 205.10? A. No.

THE COURT: Repeat the question, please.

(The pending question was read back by the reporter.)

MR. MATTISON: I have no further questions.

THE WITNESS: May I say something else?

I understand — and I haven't done my homework on this one — but in the agreement that the Department of Social

Services has with all of the Title 20 agencies, such as DCYS, they are to have a hearing prior to a discontinuance, and then also the right to the fair hearing later on. To my knowledge, that hasn't been implemented in writing. In fact, the whole hearing process in Title 20 is still in implementation state.

MR. MATTISON: Thank you.

THE COURT: Was there a Title 20 termination in the Sockwell case at any time?

THE WITNESS: You mean the services discontinued?

THE COURT: You said if Title 20 services are terminated, there must be a hearing; is that correct? Pretermination hearing? My question is: In this case, in your opinion, at any time was there a Title 20 discontinuance?

THE WITNESS: I don't know from my own knowledge because of the way they speak about this hearing at this particular time, is this an informal hearing or discussion with the person? And they haven't made provision for actual written, and I understand that someone talked with Mrs. Scott. Now, whether it was really this kind of discussion that's supposed to be held prior to termination, I don't know of my knowledge, but I assume there was no formalized hearing.

THE COURT: Are you trying to convey to the Court that Miss Dixon's visit with Mrs. Scott might be construed to be a hearing?

THE WITNESS: I wouldn't say. That's why I say I don't really know all that happened at that time.

THE COURT: Doesn't "hearing" imply to you, based on your knowledge and experience, a hearing officer, a lawyer is present, a stenographer is present, or someone making notes, somthing formal; doesn't that —

THE WITNESS: In our regulations we have a provision for an informal hearing other than the fair hearing type of hearing.

THE COURT: Miss Dixon was a messenger, you knew that. Did you think — was it Miss Dixon who went over and told Mrs. Scott that her payments were being discontinued under foster care, had the authority to have a hearing and reverse that decision?

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THE COURT: In those cases that we are talking about now where there is 100 per cent payment from state funds, are the payments at the rate of — at a rate that is higher than the AFDC payments?

MR. MACGREGOR: Yes, it would be — that type of payment is not based on the need of the person getting the money.

In other words, if the children went to live with Ms. Jones down the street, if she was a millionaire, the rate is a fixed foster care rate and the only time that foster care rates are changed is on taking care of the child, not the need of the foster parents.

MR. MATTISON: There is the need of the child?

MR. MACGREGOR: I realize that.

THE COURT: The court reporter can't pick up both of you talking at the same time.

MR. MACGREGOR: What I am saying, that foster care money is not based on the need of the foster care. It is a fixed rate.

THE COURT: It is the state's opinion that if foster care payments are modified or terminated in the cases we are now talking about, no pretermination hearing is necessary, but the foster parent has an opportunity for a post-termination; is that correct?

MR. MacGREGOR: That's right, by state statute.

THE COURT: If there is matching federal funds and if there are AFDC foster care payments made, the state admits that a pretermination hearing is necessary?

MR. MacGREGOR: That's right. In my opinion, 22814 and 205 apply.

Transcript, pages 82-86

MARY SCOTT, called as a witness, being first duly sworn, testified as follows:

THE CLERK: State your name for the record, and address?

THE WITNESS: Mary Scott, 56 Daggett Street, New Haven.

DIRECT EXAMINATION BY MS. LEONARD:

Q. What is your relation to the four Sockwell children?
A. Foster mother.

Q. How long have you been their foster mother?
A. Three years.

Q. Have you in the past two months stopped receiving foster care benefits for these children? A. Yes.

Q. Do you recall when it was that you stopped receiving it? A. It was in May, I think.

Q. When the foster care benefits for the children ended, did the kid begin developing problems?

MR. MacGREGOR: I object. Obviously leading the witness. Are they problems? There is no testimony there were problems.

THE COURT: This is a Court trial. I will allow a little bit of leading to get right to the point.

BY MS. LEONARD:

Q. Mrs. Scott, will you tell the Court whether the children have had a reaction to the fact that the foster care money has stopped? A. Yes.

Q. Cherise is one of the four children; she is age ten. Has she had a reaction in the last two months? A. Yes.

Q. Can you tell the Court specifically what an example of that was? A. She started back wetting the bed, and like I wasn't able to get her a pair of sneakers, and she cries. I had to take her to the psychiatrist, and I am taking her back and forth every three weeks over there to see the doctor.

Q. You take her to see the doctor where? A. To the Hill Center.

Q. For what reason do you take her to the doctor?
A. Because to get her calm down.

Q. What does he do to calm her down? A. He has to give her medicine.

Q. Has she got problems at school, as well? A. Yes.

Q. What would those be? A. She went and told her teacher everybody, everybody likes lies, just like her mother,

and that her teacher had to help me get a pair of sneakers for her.

Q. Renee is age eleven. Has she had a reaction in the last two months? A. Yes.

Q. Would you describe that for the Court? A. Renee, she got all upset, and she go to the school and she goes to sleep and she cries and I have to take her to the doctor.

Q. The problem of sleeping in school, is that a problem that Renee had some time ago? A. Yes, and it cleared up when everything was settled down, and it was cleared up, and now things are back up in the air again, and the same thing happening.

Q. Marsha is age — A. She asked me for some money to go on a trip, and I didn't have the money to give her, so she just jumped down the stair steps and put two hole in her head.

Q. What did you have to do about the injury?

A. Then the teacher call me up and want to know what happened. And I explained and the teacher had to help me get the money.

Q. Could you explain to the Court the amount of money and the type of treatment you're talking about? A. The money was three dollars. The teacher had to help me get up for her to go on the trip.

Q. What was the trip? A. They was going to Camp Cedar.

Q. That was a trip with other children? A. Yes.

Q. In school? A. Yes.

Q. Have you yourself had problems over the last two months? A. Yes. I have problems because I cannot rest at night with them because they cries and they be up all time of night, and I have to be up with them.

Q. Can you tell the Court whether the situation has gotten worse? A. It gotten worse since without the money because I am not able to give them the money that they need.

Q. Will it worsen over time? A. When school start back, it going to be worse.

Q. Why is that? A. Because I am not going to be able to get clothes and stuff for them when they going to school.

Q. Did you tell the children when the foster care money was stopped? A. Yes.

Q. Did it occur to you that it would upset the children to tell them that? A. Yes, I know it would, but I have to tell them the truth because I cannot keep lying to them, because they don't trust anybody.